

REMARKS

Please reconsider the application in view of the above amendments and the following remarks. Applicant thanks the Examiner for carefully considering this application.

Rejections under 35 U.S.C. 102(e)

Claims 1-15 stand rejected under 35 U.S.C. 102(e) as being anticipated by Cisar et al. U.S. 6,638,657.

The examiner asserts that Cisar teaches, among other things, that a “frame is formed by injecting a polymer into a mold overlapping the perimeter of the fluid barrier (see col. 3, lines 30-40).” (Office Action of Dec. 31, 2007, page 3). In the cited passage, the only statement about injection molding is in reference to FIGS. 14A and 14B. However, the discussion of FIGS. 14A and 14B (see col. 8, line 59 to col. 9, line 22) states that a polymer gas barrier 84 is formed in the metal foam sheet 82. The gas barrier 84 is therefore internal to the foam sheet 82, such that any subsequent plastic frame formed around the resulting bipolar plate, whether injection molded or not, does not “overlap the perimeter of the fluid barrier.” By comparison, the Applicant directs attention to present Figures 3 and 6A-E which illustrate one embodiment of a “frame is formed by injecting a polymer into a mold overlapping the perimeter of the fluid barrier.” Cisar ‘657 provides no such disclosure.

With respect to claims 2-6, the examiner cites to Cisar (col. 4, lines 50-60) as disclosing “the fluid barrier is metal.” While the embodiment discussed at col. 4, lines 50-60 in reference to FIGS. 3A and 3B disclose a metal sheet 52, there is no disclosure of forming a frame around this metal sheet by injection molding. Since Cisar ‘657 fails to disclose an embodiment that include each and every limitation of the claims 2-6, the claims are not anticipated.

Reconsideration and withdrawal of the rejection is requested.

Rejections under 35 U.S.C. 103(a)

Claims 17-32, 34-62, and 64-76 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Cisar et al. U.S. 6,638,657.

Claims 16, 33 and 63 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Cisar et al. U.S. 6,638,657 in view of Wakamatsu U.S. 6,231,053.

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of 35 U.S.C. § 102 shall not preclude patentability under §103 where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person. 35 U.S.C. § 103(c)(1); *see also* MPEP §§ 2146, 706.02(l)(2)-(3). Applications and references will be considered by the examiner to be owned by the same person at the time the invention was made if the applicant(s) or an attorney or agent of record makes a statement to the effect that the application and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person. MPEP § 706.02(l)(2)(II). Furthermore, MPEP 706.02(l)(2)(I) states that “[t]he term ‘commonly owned’ is intended to mean that the subject matter which would otherwise be prior art to the claimed invention and the claimed invention are entirely or wholly owned by the same person(s) or organization(s)/business entity(ies) at the time the claimed invention was made.”

Statement of Common Ownership

The subject matter of Cisar et al. (U.S. Pat. No. 6,638,657) and the present application 10/727,854 were, at the time the invention was made, owned by the same person(s).

Having set forth sufficient evidence of common ownership, the foregoing rejections of the claims under 35 U.S.C. 103(a) are improper, as a matter of law, under 35 U.S.C. § 103(c)(1). Reconsideration and withdrawal of the rejections is respectfully requested.

In the event there are additional charges in connection with the filing of this Response, the

Commissioner is hereby authorized to charge the Deposit Account No. 50-0714/LYNN-0161 of the firm of the below-signed attorney in the amount of any necessary fee.

Respectfully submitted,

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